

Maine Revised Statutes
Title 38: WATERS AND NAVIGATION
Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS

§480-X. ALTERATIONS OF FRESHWATER WETLANDS

An application for a permit to undertake activities altering freshwater wetlands must be processed by the department using the review process described in this section. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

1. Application. This section does not apply to activities otherwise qualifying for reduced review procedures, such as permits by rule or general permits; activities exempt from review under another section of this article; or activities involving protected natural resources other than freshwater wetlands, such as great ponds, coastal wetlands and rivers, streams or brooks.

[1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF) .]

2. Three-tiered review process; tiers defined. Except as provided in subsection 1, an application for a permit to undertake activities altering freshwater wetlands must be reviewed in accordance with the following.

A. A Tier 1 review process applies to any activity that involves a freshwater wetland alteration up to 15,000 square feet and does not involve the alteration of freshwater wetlands listed in subsection 4. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

B. A Tier 2 review process applies to any activity that involves a freshwater wetland alteration of 15,000 square feet up to one acre and does not involve the alteration of freshwater wetlands listed in subsection 4 or 5. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

C. A Tier 3 review process applies to any activity that involves a freshwater wetland alteration of one acre or more or an alteration of a freshwater wetland listed in subsection 4 or 5. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

If the project as a whole requires Tier 2 or Tier 3 review, then any activity that is part of the overall project and involves a regulated freshwater wetland alteration also requires the same higher level of review, unless otherwise authorized by the department.

In determining the amount of freshwater wetland to be altered, all components of a project, including all phases of a multiphased project, are treated together as constituting one single and complete project. Activity authorized or legally conducted prior to the effective date of this section is not included.

The standards of section 480-D do not apply to projects that qualify for Tier 1 review, except that habitat standards under section 480-D, subsection 3 and water quality standards under section 480-D, subsection 5 apply to those projects. Projects that meet the eligibility requirements for Tier 1 review and that satisfy the permitting requirements set forth in subsection 3 and 6, as applicable, are presumed not to have significant environmental impact.

[2005, c. 592, §1 (AMD) .]

3. General requirements. A person undertaking an activity for which a permit is processed pursuant to this section shall satisfy the requirements of this subsection.

A. An applicant for Tier 1, Tier 2 or Tier 3 review shall meet the following requirements.

(1) Alteration of freshwater wetland areas on the property must be avoided to the extent feasible considering cost, existing technology and logistics based on the overall purpose of the project.

(2) The area of the freshwater wetland to be altered must be limited to the minimum amount necessary to complete the project. [2003, c. 554, §1 (AMD).]

B. [2003, c. 554, §1 (RP).]

C. An applicant for Tier 1 review shall meet the following requirements.

(1) Erosion control measures must be used to prevent sedimentation of protected natural resources. A 25-foot buffer strip must be maintained between the activity and any river, stream or brook.

(2) The activity must comply with applicable water quality standards pursuant to section 480-D, subsection 5. [2003, c. 554, §1 (NEW).]

D. An applicant for Tier 2 or Tier 3 review shall comply with the standards contained in section 480-D. [2003, c. 554, §1 (NEW).]

[2003, c. 554, §1 (AMD).]

4. Projects not eligible for Tier 1 or Tier 2 review. The following activities are not eligible for Tier 1 or Tier 2 review unless the department determines that the activity will not negatively affect the freshwater wetlands and other protected natural resources present:

A. Activities located within 250 feet of:

(1) A coastal wetland; or

(2) The normal high-water line, and within the same watershed, of any lake or pond classified as GPA under section 465-A; [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

B. Activities occurring in freshwater wetlands, other than artificial ponds or impoundments, containing under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water; [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

C. Activities occurring in freshwater wetlands that are inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information; [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

D. Activities occurring in freshwater wetlands containing significant wildlife habitat that has been mapped, identified or defined, as required pursuant to section 480-B, subsection 10, at the time of the filing by the applicant; [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

E. Activities occurring in peatlands dominated by shrubs, sedges and sphagnum moss, except that applications proposing work in previously mined peatlands may be considered by the department for Tier 1 or Tier 2 review, as applicable; or [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

F. Activities occurring within 25 feet of a river, stream or brook. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

The department shall inform the applicant in writing within the review period specified in subsection 6 or 7 if the proposed project does not qualify for Tier 1 or Tier 2 review processing and shall explain permitting options if the applicant wishes to pursue the project. The department is responsible for providing information necessary to establish whether the types of wetlands described in paragraphs D and E will be affected by the proposed activity. Unless the applicant knowingly or willfully provided incomplete or false information to the department, if the department does not notify the applicant that the proposed project does not qualify for Tier 1 or Tier 2 review, the project is deemed to be qualified for Tier 1 or Tier 2 review, as applicable.

[1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

5. Additional projects not eligible for Tier 2 review. An activity in freshwater wetlands containing a natural community that is imperiled (S2) or critically imperiled (S1), as defined by the Natural Areas Program pursuant to Title 12, section 544 is not eligible for Tier 2 review unless the department determines that the activity will not negatively affect the freshwater wetlands and other protected natural resources present.

[1999, c. 556, §32 (AMD) .]

6. Application process for Tier 1 review activities. Applications for Tier 1 review are governed by this subsection.

A. The application must be sent by certified mail or hand-delivered to the department. The application must include:

- (1) The application fee;
- (2) The project location on a United States Geological Survey map;
- (3) A description of the project, including a drawing showing the area of freshwater wetland to be filled or otherwise altered and areas of any marsh or open water within the freshwater wetland; and
- (4) A signed statement averring that all of the requirements of subsection 3 will be met, that the activity will not occur in a wetland area described in subsection 4 and that a copy of the application has been submitted by the applicant for public display to the municipal office of the municipality in which the project will be located. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF) .]

B. Work may not occur until 45 days after the department receives a complete application, unless written approval is issued sooner by the department. The department shall notify the applicant in writing no later than 45 days after the department receives a complete application if the applicable requirements of this section have not been met or if the review period may be extended pursuant to section 344-B, subsection 4. If the department has not notified the applicant within the 45-day review period, a permit is deemed to be granted. [2005, c. 592, §2 (AMD) .]

C. Fees for Tier 1 review may not exceed the following:

- (1) For projects up to 5,000 square feet, \$35;
- (2) For projects from 5,000 square feet up to 10,000 square feet, \$75; and
- (3) For projects from 10,000 square feet up to 15,000 square feet, \$150. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF) .]

[2005, c. 592, §2 (AMD) .]

7. Application process for Tier 2 review. Applications for Tier 2 review are governed by this subsection.

A. An application form must be submitted, with the application fee, to the department and include the following information:

- (1) Documentation that public notice has been provided of the proposed project in accordance with department rules;
- (2) A United States Geological Survey map showing the project location;
- (3) Written certification by a knowledgeable professional experienced in wetland science that the project will not alter, or cause to be altered, a wetland described in subsection 4 or 5;
- (4) A top view drawing of the entire project, including existing and proposed fill, excavation, roads and structures; cross-sectional drawings of any fill or excavated areas; delineation of the wetland boundaries and calculated area of freshwater wetlands affected; description of existing vegetation

on the project site; identification of any surface water bodies within 100 feet of the proposed alteration; and a drawing of the 25-foot buffer strip between the project and any river, stream or brook;

(5) A soil erosion and sedimentation control plan;

(6) For work in previously mined peatlands, information on the past mining activity, including the approximate dates of the mining activity, the area and depth to which peat has been excavated from the site, any restoration work on the site and the current condition of the site;

(7) A statement describing why the project can not be located completely in upland areas and any alternatives that exist for the project that would either avoid or minimize the amount of proposed freshwater wetland alteration;

(8) A plan for compensating for lost functions and values of the freshwater wetland when required by, and in accordance with, rules adopted by the department; and

(9) Any other information determined by the department to be necessary to meet the requirements of section 480-D and rules adopted by the department. [2003, c. 554, §2 (AMD).]

B. Work may not occur until 60 days after the department has received a complete application for processing, unless written approval is issued sooner by the department. The department shall notify the applicant in writing within 60 days of the department's receipt of a complete application whether the applicable requirements of this section have been met or if the review period may be extended pursuant to section 344-B, subsection 4. If the department has not notified the applicant within the 60-day review period, a permit is deemed to be granted. [1999, c. 243, §14 (AMD).]

C. Fees for Tier 2 review must be set in accordance with the department's fee schedule for freshwater wetland alterations under the natural resources protection laws. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

[2003, c. 554, §2 (AMD) .]

8. Application process for Tier 3 review. Applications for Tier 3 review are governed by this subsection.

A. An application form must be submitted to the department that contains all the information required for Tier 2 review, in addition to any information determined by the department to be necessary to meet the requirements of section 480-D and rules adopted by the department. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

B. Written approval from the department is required before work may begin. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

C. Fees for Tier 3 review are set in accordance with the department's fee schedule for freshwater wetland alterations under the natural resources protection laws. [1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF).]

[1995, c. 460, §7 (NEW); 1995, c. 460, §12 (AFF) .]

SECTION HISTORY

1995, c. 460, §7 (NEW). 1995, c. 460, §12 (AFF). 1995, c. 502, §E32 (AMD). 1995, c. 575, §3 (AMD). 1999, c. 243, §§13,14 (AMD). 1999, c. 556, §32 (AMD). 2003, c. 554, §§1,2 (AMD). 2005, c. 592, §§1,2 (AMD).

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